

FCC MAIL SECTION

Before the  
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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 92M-831  
03740

In re Applications of	)	MM DOCKET NO. 92-106 ✓
JEFFREY SCOTT	)	File No. BPH-910213ME
EICHER COMMUNICATIONS, INC.	)	File No. BPH-910213MF
For Construction Permit for a	)	
New FM Station on Channel 278A	)	
in Bethany Beach, Delaware	)	

MEMORANDUM OPINION AND ORDER

Issued: July 29, 1992;

Released: July 31, 1992

Background

1. This is a ruling on a Joint Request For Approval Of Settlement Agreement that was filed on June 3, 1992, by Eicher Communications, Inc. ("Eicher") and Jeffrey Scott ("Scott"), and on a related Petition For Leave To Amend that was filed by Scott on June 3, 1992. Also considered are a Supplement To Joint Request For Approval Of Settlement Agreement filed by Eicher on June 16, 1992, and Mass Media Bureau ("Bureau") Comments In Support Of Joint Request For Approval Of Settlement Agreement filed on June 18, 1992.

Facts

2. Eicher and Scott are the only two exclusive applicants for a construction permit for a new FM Station on Channel 278 at Bethany Beach, Delaware. See Hearing Designation Order DA 92-559, released May 14, 1992, reported at Jeffrey Scott, et al., 7 F.C.C. Rcd 3041 (MM Bur. 1992).

3. The Settlement contemplates that Eicher's application will be voluntarily dismissed with prejudice in return for a payment of a sum of money that is not to exceed \$18,000, representing its legitimate and prudent expenses. In addition, the parties have entered into a Consulting Agreement pursuant to which Scott will pay Eicher \$17,000 to provide broadcast station financial planning and management services to Scott for a period of one year. Scott contemplates withdrawing his integration and diversification commitments and Scott would receive the grant.

4. The proposed Amendment addresses an issue set in the Hearing Designation Order, supra at Paras. 5 and 9 on how Scott "propose[s] to resolve any RF exposure to workers" on his proposed tower. Scott was permitted to amend his tower site to cure a short-spacing. See Hearing Designation Order, supra at Paras. 2-3. Scott proposes to construct a new tower and commits to shut down station operations as necessary in order to protect workers. On July 28, 1992, the Assistant Chief, Audio Services Division, advised the Presiding Judge in writing:

Upon examination of the enclosed pleading [Petition For Leave To Amend], the Bureau finds that the information satisfies the requirements of 47 C.F.R. §1.1311.

Accordingly, the Bureau requests that the contingent environmental issue specified as to this applicant be eliminated from the Hearing Designation Order.

See ltr. dtd. July 28, 1992 from Assistant Chief Jan Gay to the Presiding Judge. Based on the unqualified statement of the Bureau quoted above and the representations of Scott in its Petition For Leave To Amend, the environmental issue against Scott is considered as deleted from the designation order.

5. Eicher has set forth in its Supplement an itemization which sufficiently demonstrates to the Presiding Judge that its legitimate and prudent expenses incurred in this proceeding are in excess of \$18,000. Also, it is noted that Eicher is a certified public accountant. The Consulting Agreement reflects that Eicher will be performing services for which he is qualified for the limited period of only one year in return for \$17,000. This appears to be a bona fide and reasonable arrangement for services. The Bureau concurs with that conclusion, citing Texas Television, Inc., 91 F.C.C. 2d 1043 (Review Bd 1982).

6. In his Petition For Leave To Amend, Scott also asks that he be permitted to withdraw his integration proposal and his proposal to classify his interest in Great South Broadcasting as nonattributable. This is a universal settlement and the agreement was filed by the deadline for filing a Notice of Appearance. Therefore, Scott readily meets the Commission standard for withdrawing integration/diversification commitments incident to a timely filed universal settlement. See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, 6 F.C.C. Rcd 157 (1990), recon. granted in part, 6 F.C.C. Rcd 3403 (1991) at Para. 6 (on reconsideration Commission extends deadline for filing withdrawal of integration and diversification proposals to exhibit exchange date). The Bureau concurs that Scott's withdrawal of his integration and divestiture commitments are timely and should be accepted. See Bureau Comments at 3. The Presiding Judge will permit Scott to withdraw his proposals.

#### Settlement

7. The statutory standard to be applied in accepting or rejecting a settlement proposal provides:

The Commission shall approve the agreement only if it determines that (a) the agreement is consistent with the public interest, convenience or necessity, and (b) no party to the agreement filed its application for the purpose of reaching or carrying out such agreement.

Communications Act of 1934, as amended, §311(c)(3). See Oak Television of Everett, Inc., et al., 93 F.C.C. 2d 926, 52 Radio Reg. 2d (P&F) 995 (Review Bd. 1983).

8. In this case, the Joint Petition was filed timely in accordance with §73.3525. The parties have represented under penalty of perjury that their applications were not filed for the purpose of reaching or carrying out a settlement agreement and that the agreement is in the public interest. Therefore, it is determined that the parties have complied with §73.3525(a)(1) and (a)(2) of the Commission's rules. Also, the Bureau has no objection to approving the settlement.

9. There has been compliance with the local publication requirements of the Commission's rules. 47 C.F.R. §73.3594(g). The parties also qualified for a waiver of the required hearing fees. 47 C.F.R. §1.221(g). Eicher has made a satisfactory showing that its expenses are reasonable and prudent, the Consulting Agreement is reasonable in its terms, duration and compensation, and Scott has met the Commission's standard for withdrawing integration and diversification commitments incident to settlement. Scott has provided for protection of persons from environmental hazard at and around its antenna site to the Bureau's satisfaction. Commission resources will be conserved by the termination of this case prior to hearing. In addition, the public interest will be served by approval of this agreement which will eliminate the need for protracted litigation and the corresponding utilization of resources, and which ensures that a new FM service will be delivered to Bethany Beach, Delaware at an earlier date. Accordingly, it is appropriate that the proposed settlement be accepted.

#### Order

IT IS ORDERED that the Joint Request For Approval of Settlement Agreement filed on June 3, 1992, by Jeffrey Scott and Eicher Communications, Inc. IS GRANTED and the Agreement IS ACCEPTED.

IT IS FURTHER ORDERED that the Petition For Leave To Amend filed on June 3, 1992, by Jeffrey Scott IS GRANTED and the Amendment IS ACCEPTED.

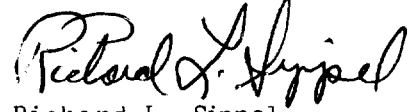
IT IS FURTHER ORDERED that the Application of Eicher Communications, Inc. (File No. BPH-910213MF) IS DISMISSED with prejudice.

IT IS FURTHER ORDERED that the Application of Jeffrey Scott (File No. BPH-910213ME) for a construction permit for New FM Channel 278A at Bethany Beach, Delaware, IS GRANTED.

IT IS FURTHER ORDERED that the integration and diversification proposals of Jeffrey Scott ARE AUTHORIZED TO BE WITHDRAWN by the applicant and ARE NOW NULL AND VOID.

IT IS FURTHER ORDERED that the proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Richard L. Sippel". The signature is written in a cursive, flowing style with a large initial "R".

Richard L. Sippel  
Administrative Law Judge